IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DIVISION DISTRICT OF LOUISIANA,
SHREVEPORT DIVISION

UNITED STATES OF AMERICA **Plaintiff**	**CIVIL ACTION NO. 5:11-CV-01781**
VERSUS	**JUDGE DONALD E. WALTER**
JAMES BALLENGEE, **LISBON PROCESSING, L.L.C.,** **And** **LISBON REFINERY J.V., L.L.C.** **Defendants**	**MAGISTRATE JUDGE MARK L. HORNSBY**

RESPONSE BY DEFENDANTS, JAMES BALLENGEE, LISBON PROCESSING, L.L.C., AND LISBON REFINERY J.V., L.L.C., TO PLAINTIFF'S, THE UNITED STATES OF AMERICA'S, FIRST SET OF INTERROGATORIES (CERTIFICATE DATED MAY 18, 2012)

NOW, appearing through their undersigned counsel of record, come defendants, James Ballengee, Lisbon Processing, L.L.C., and Lisbon Refinery J.V., L.L.C. (hereinafter collectively referred to as "**Defendants**"), and now, in response to plaintiff's, the United States of America's, (hereinafter "**Plaintiff**"), First Set of Interrogatories, aver as follows:

GENERAL OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Defendants, James Ballengee, Lisbon Processing, L.L.C. and Lisbon Refinery J.V., L.L.C., generally object to the plaintiff's First Set of Interrogatories as follows:

Defendants generally object to plaintiff's Instruction No. 2 as being overly and excessively broad in that its purports to cover all information not only in defendants' possession,

custody and control, but also information in the "possession, custody and control" of "officers, employees, agents, servants, representatives, attorneys, or other persons directly or indirectly employed or retained by any Defendant, or anyone else acting on a Defendant's behalf or otherwise subject to its control, and any merged, consolidated, or acquired predecessor or successor." Defendants believe that this instruction is impermissibly broad and burdensome. Defendants also object that this Instruction is vague, ambiguous and confusing as well.

Defendants also generally object to the definition of "Creek" or "the Creek", as it seems to suggest that this unnamed creek or ditch perpetually has and/or contains water, while defendants believe the evidence will show that it only intermittently holds and/or has water. Also, the definition seems to suggest that the "discharge" which occurred on or about June 21, 2007, was intentional or deliberate, as opposed to having occurred accidentally, and is objected to on that basis as well.

Defendants also generally object to the definition of "Employee" under the Definition Section as being overly broad in that "Employee" is defined to include not only a person "who was hired for a wage, salary, fee," but also any person who has received any "payment to perform work for any Defendant." Defendants also generally object that, in addition, this definition is vague, ambiguous and confusing. Defendants intend to respond to plaintiff's Interrogatories containing the word "Employee" by limiting themselves to the traditional meaning and/or definition of "Employee" which is "one employed by another usually for wages or salary and in a position below the executive level."

Defendants also generally object to the definition of "Spill" or "the Spill" to the extent plaintiff means to suggest that the "discharge", which occurred on or about June 21, 2007, was intentional or deliberate, as opposed to having occurred accidentally.

Defendants also generally object to the definition of "You" as being excessively and overly broad in that it purports to include not only defendants and any agent or employee of defendants, but also "experts", "attorneys" and "persons who have access to the requested information and from whom defendants can obtain such information." Defendants believe this is an impermissibly broad definition of "You".

Subject to these general objections, defendants further respond as follows:

"INTERROGATORY NO. 1:

For each employee of Defendants Lisbon Processing or Lisbon Refinery, describe in full and complete detail: (a) the person's title and job description; (b) the person's period of employment; (c) the person's relationship(s), past or present, with any other business or commercial venture owned or operated by, or related to, any Defendant in this action."

ANSWER TO INTERROGATORY NO. 1:

Neither Lisbon Processing nor Lisbon Refinery has employed any person and/or has had an employer/employee relationship with anyone. To the extent necessary, Lisbon Processing and Lisbon Refinery borrowed employees from another company.

"INTERROGATORY NO. 2:

If you contend that the spill was not a discharge into or upon a "navigable water," as that term is defined in section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), identify the basis for that contention and any evidence in support thereof."

ANSWER TO INTERROGATORY NO. 2:

Defendants object to this Interrogatory as premature. Discovery is still on-going and additional information may be discovered which has bearing on this Interrogatory and the subject matter of this Interrogatory. Subject to this objection and comments, the unnamed creek or ditch is an intermittent body of water, rather than a permanent or perennial body of water as alleged by plaintiff in its Complaint, and is not a navigable body of water as per the Corps of Engineers' official maps. In addition, Fivemile Creek is not a navigable body of water, nor is Bayou D'Arbonne up to the Unionville Bridge as per the Corps of Engineers official maps. Also, please see LDEQ 2921, which is attached, and which refers to the unnamed creek or ditch as not being "navigable" waters, and/or as not being a "navigable waterway". In addition, although requested to do so in written discovery propounded to plaintiff by defendants, plaintiff has failed to produce/provide any affirmative evidence establishing and/or supporting its contention that the unnamed creek or ditch is part of the navigable waters of the United States of America.

"INTERROGATORY NO. 3:

If you contend that the maximum true vapor pressure of the product stored in any of the tanks at the Facility during Defendant's period of ownership and/or operation was below 11.1 psia, identify the basis for that contention and any evidence in support thereof."

ANSWER TO INTERROGATORY NO. 3:

Product stored at the Facility in 2007 was at a true vapor pressure below 11.1 psia for the months of January through May 2007 as shown by the table on **Attachment A.** Product was totally removed from the Facility in early August 2007, so the true vapor pressure was at or near

0 psia in August 2007. For the months of June and July 2007, the true vapor pressure may have slightly exceeded 11.1 psia, but only in the few tanks still in use during those months. As of July 5, 2007, the date of the Cease and Desist Order received from LDEQ, there were only approximately 10,000 bbls in a few tanks. The true vapor pressure in the majority of tanks was 0 psia, because they were empty.

Product stored at the Facility in 2009 never exceeded a true vapor pressure of 11.1 psia. In fact, during the only months of operation, March through May 2009, the true vapor pressure never exceeded 7.47 psia. See the table in **Attachment B**.

"INTERROGATORY NO. 4:

If you contend that you believed at any time that you were under an obligation not to dispose of the contents of the roll-off boxes at the Facility, describe in full and complete detail the basis for that contention. In your answer, identify any person not directly employed by any Defendant to this action, including but not limited to contractors, consultants, and government officials, with whom you communicated about your obligations related to the roll-off boxes and the date on which the communication occurred."

ANSWER TO INTERROGATORY NO. 4:

Defendant, James Ballengee, responds that he was told by someone with the FBI not to dispose of the roll-off boxes and/or the contents of the roll-off boxes because an investigation was on-going. Mr. Ballengee is unable to remember the name of the person who told him this or the date that this occurred.

"INTERROGATORY NO. 5:

If you contend that the Facility is not subject to Spill Prevention and Containment and Countermeasures regulations (40 CFR § 112.1-112.15), describe in full and complete detail the basis for your contention, identifying any documents and evidence in support thereof."

ANSWER TO INTERROGATORY NO. 5:

Not applicable.

"INTERROGATORY NO. 6:

If your response to any Request for Admission is anything other than an unqualified admission, state with specificity each fact which supports your response and identify each document which supports your response."

ANSWER TO INTERROGATORY NO. 6:

Defendants object to this Interrogatory as being overly broad and burdensome. Defendants also object to this Interrogatory as premature. Discovery has only just begun, and no depositions have been taken. Subject to the general and specific objections, defendants further respond as follows:

As to Request for Admission No. 3: The statement made is not a true statement.

As to Request for Admission No. 4: The statement made is not a true statement.

As to Request for Admission No. 5: The statement made is not a true statement.

As to Request for Admission No. 6: The statement made is not a true statement.

As to Request for Admission No. 7: The statement made is not a true statement.

As to Request for Admission No. 8: The statement made is not a true statement. Defendant, Ballengee, did not make the statement ascribed to him in this Request.

As to Request for Admission No. 18: Karen Courtman's discussion with defendant, Ballengee, was only in relation to the material being taken out of tanks as a result of, and/or during, on-going tank repairs. It did not apply to any other material which may or may not have been present at the facility as Request for Admission No. 18 seems to suggest.

As to Request for Admission No. 20: Defendants do not believe any such "spill" took place as is described.

As to Request for Admission No. 21: Defendants do not believed that any such "spill" took place as is described.

As to Request for Admission No. 22: Defendants do not believe any such "spill" took place as is described.

As to Request for Admission No. 23: Defendants do not believe any such "spill" took place as is described.

As to Request for Admission No. 24: Defendants do not believe any such "spill" took place as is described.

As to Request for Admission No. 25: Defendants do not believe any such "spill" took place as is described.

As to Request for Admission No. 26: Defendants do not believe any such "spill" took place as is described.

As to Request for Admission No. 27: Defendants do not believe any such "spill" took place as is described.

As to Request for Admission No. 28: Defendants do not believe the evidence will support this statement, and/or that this is a true statement.

As to Request for Admission No. 29: Defendants do not believe the evidence will support this statement, and/or that this is a true statement.

As to Request for Admission No. 30: Defendants do not believe this is a true statement, and/or that there is evidentiary support for this statement. The way this Request is phrased, specifically use of the word "leaking", it seems to suggest that the tank(s) referred to had failed seals, which was not the case, and/or which was not necessarily the case, simply because vapors may have been detected, if they, in fact, were. The detection of emissions using FID, PID, or infrared camera, even if accurate, is not a definitive basis to conclude that seals on the referred to tank(s) are "leaking". Vapors may be emitted during normal IFR operations without there being failed seals.

As to Request for Admission No. 31: Defendants do not believe this is a true statement, and/or that there is evidentiary support for this statement. The way this Request is phrased, specifically use of the word "leaking", it seems to suggest that the tank(s) referred to had failed seals, which was not the case, and/or which was not necessarily the case, simply because vapors may have been detected, if they, in fact, were. The detection of emissions using FID, PID, or infrared camera, even if accurate, is not a definitive basis to conclude that seals on the referred to tank(s) are "leaking". Vapors may be emitted during normal IFR operations without there being failed seals.

As to Request for Admission No. 32: Defendants do not believe this is a true statement, and/or that there is evidentiary support for this statement. The way this Request is phrased,

specifically use of the word "leaking", it seems to suggest that the tank(s) referred to had failed seals, which was not the case, and/or which was not necessarily the case, simply because vapors may have been detected, if they, in fact, were. The detection of emissions using FID, PID, or infrared camera, even if accurate, is not a definitive basis to conclude that seals on the referred to tank(s) are "leaking". Vapors may be emitted during normal IFR operations without there being failed seals.

As to Request for Admission No. 33: Defendants do not believe this is a true statement, and/or that there is evidentiary support for this statement. The way this Request is phrased, specifically use of the word "leaking", it seems to suggest that the tank(s) referred to had failed seals, which was not the case, and/or which was not necessarily the case, simply because vapors may have been detected, if they, in fact, were. The detection of emissions using FID, PID, or infrared camera, even if accurate, is not a definitive basis to conclude that seals on the referred to tank(s) are "leaking". Vapors may be emitted during normal IFR operations without there being failed seals.

As to Request for Admission No. 35: Defendants do not believe that the portion of the Request which says that the benzene concentration was tested up to 5910 micrograms per liter is correct. Defendants do not believe that this is a true statement, and/or that there is evidentiary support for this statement

As to Request for Admission No. 37: Defendants are not aware of any evidentiary support for the statement that the benzene concentration upstream of where Fowler Road crosses Fivemile Creek was found to be 16.1 micrograms per liter.

As to Request for Admission No. 38: Defendants are not aware of any evidentiary support for the statement that the benzene concentrations at a point south of where Fowler Road crosses Fivemile Creek was found to be 30 micrograms per liter.

As to Request for Admission No. 40: Defendants do not believe that this is a true statement.

As to Request for Admission No. 44: The statement made is not true.

As to Request for Admission No. 50: Defendants do not believe that the evidence will show "numerous" wildlife deaths occurred.

As to Request for Admission No. 51: Defendants do not believe that this statement reflects an accurate measurement of the distance between the unnamed creek or ditch and the tanks.

As to Request for Admission No. 53: The statement made is not believed to be true.

As to Request for Admission No. 54: The statement made is not believed to be true.

As to Request for Admission No. 55: The statement made is not believed to be true.

As to Request for Admission No. 56: The statement made is not believed to be true.

As to Request for Admission No. 60: The statement made is not believed to be true.

As to Request for Admission No. 64: The statement made is not believed to be true.

As to Request for Admission No. 65: The statement made is not believed to be true.

As to Request for Admission No. 66: The statement made is not believed to be true.

As to Request for Admission No. 67: The statement made is not believed to be true.

As to Request for Admission No. 68: The statement made is not believed to be true.

Respectfully submitted,

ROEDEL PARSONS KOCH BLACHE BALHOFF & McCOLLISTER

BY: Thomas E. Balhoff

Thomas E. Balhoff, #2716
Timothy W. Hardy
V. Joyce Matthews
Judith R. Atkinson, #17240
Carlton Jones, III, #25732
8440 Jefferson Highway, Suite 301
Baton Rouge, Louisiana 70809
Tele: 225-929-7033
Fax No.: 225-928-4925
Attorneys for Defendants, James Ballengee, Lisbon Processing, L.L.C. , And Lisbon Refinery J.V., L.L.C.

CERTIFICATE

I hereby certify that the above and foregoing has this been sent to all counsel via e-mail and U.S. Mail.

Baton Rouge, Louisiana, this 18th day of July 2012.

Thomas E. Balhoff

Thomas E. Balhoff

Natural gasoline is the bottom stream from the debutanizer tower, which is the last step in the fractionation process. As a refined product, the vapor pressure conversion from RVP is based on the temperature and distiallation slope. AP-42 provides recommended slopes with Light Naphtha as the most similar product listed in Table 7.1-4.

The average RVP of product received from 3/17/2007 to 6/26/2007 is:

RVP_{avg}	14.24

The distillation slope used for natural gasoline is:

SLOPE	3.5

The true vapor pressure (TVP) is calculated using AP-42 Fig 7.1-14b/API 2517 Fig 17B, which provides the same results as API 2517 nomograph referenced in 40 CFR 112b:

$$P = \exp\left\{\left[0.7553 - \left(\frac{413.0}{T + 459.6}\right)\right] S^{0.5} \log_{10}(RVP) - \left[1.854 - \left(\frac{1,042}{T + 459.6}\right)\right] S^{0.5} + \left[\left(\frac{2,416}{T + 459.6}\right) - 2.013\right] \log_{10}(RVP) - \left(\frac{8,742}{T + 459.6}\right) + 15.64\right\}$$

Where:

P = stock true vapor pressure, in pounds per square inch absolute.
T = stock temperature, in degrees Fahrenheit.
RVP = Reid vapor pressure, in pounds per square inch.
S = slope of the ASTM distillation curve at 10 percent evaporated, in degrees Fahrenheit per percent.

Note: This equation was derived from a regression analysis of points read off Figure 7.1-14a over the full range of Reid vapor pressures, slopes of the ASTM distillation curve at 10 percent evaporated, and stock temperatures. In general, the equation yields P values that are within ±0.05 pound per square inch absolute of the values obtained directly from the nomograph.

Figure 7.1-14b. Equation for true vapor pressure of refined petroleum stocks with a Reid vapor pressure of 1 to 20 pounds per square inch.[4]

2007 True Vapor Pressure at Monthly-Average Product Temperature

2007 Months	RVP	T_{MA}	Ts	P_{VA}
January	14.24	46.80	49.30	6.40
February	14.24	50.60	53.10	6.88
March	14.24	64.20	66.70	8.80
April	14.24	63.40	65.90	8.68
May	14.24	75.10	77.60	10.63
June	14.24	81.30	83.80	11.79
July	14.24	81.40	83.90	11.81
August	14.24	86.30	88.80	12.80
September	14.24	80.40	82.90	11.62
October	14.24	69.70	72.20	9.69
November	14.24	58.50	61.00	7.95
December	14.24	51.80	54.30	7.03

Notes:

P_{VA}: True Vapor Pressure at monthly average liquid storage temperature (psia)., ref. AP-42 Fig 7.1-14b.
T_{MA}: Monthly Average Ambient Temperature (ºF), ref, NOAA NCDC KSHV, 2007 Data.
T_S: Monthly Average Liquid Surface Temperature (ºF)
where: $T_S = T_{MA} + 2.5$ (based on AP-42 Eq 2-3, Note 3).

40 CFR 112b specifies the maximum true vapor pressure be based on the maximum local monthly average ambient temperature as reported by the National Weather Service. For crude, available RVP data and the maximum expected storeage temperature based on the highest expected calendar month average termperature of the stored product may be used along with nomographs contaiend in API

The maximum RVP of product tested in March 2009 is:

RVP_{avg}	8.30

The true vapor pressure (TVP) is calculated using AP-42 Fig 7.1-13b/API 2517 Fig 18B, which provides the same results as API 2517 nomograph referenced in 40 CFR 112b:

$$P = \exp\left\{\left[\left(\frac{2{,}799}{T + 459.6}\right) - 2.227\right]\log_{10}(RVP) - \left(\frac{7{,}261}{T + 459.6}\right) + 12.82\right\}$$

Where:

P = stock true vapor pressure, in pounds per square inch absolute.
T = stock temperature, in degrees Fahrenheit.
RVP = Reid vapor pressure, in pounds per square inch.

Note: This equation was derived from a regression analysis of points read off Figure 7.1-13a over the full range of Reid vapor pressures, slopes of the ASTM distillation curve at 10 percent evaporated, and stock temperatures. In general, the equation yields P values that are within +0.05 pound per square inch absolute of the values obtained directly from the nomograph.

Figure 7.1-13b. Equation for true vapor pressure of crude oils with a Reid vapor pressure of 2 to 15 pounds per square inch.[4]

2009 True Vapor Pressure at Monthly-Average Product Temperature

2007 Months	RVP	T_{MA}	Ts	P_{VA}
January	8.30	47.80	50.30	4.84
February	8.30	54.40	56.90	5.44
March	8.30	58.00	60.50	5.79
April	8.30	64.20	66.70	6.44
May	8.30	73.10	75.60	7.47
June	8.30	81.40	83.90	8.54
July	8.30	84.00	86.50	8.90
August	8.30	81.50	84.00	8.55
September	8.30	76.00	78.50	7.83
October	8.30	63.10	65.60	6.32
November	8.30	58.10	60.60	5.80
December	8.30	44.90	47.40	4.59

Notes:

P_{VA}: True Vapor Pressure at monthly average liquid storage temperature (psia)., ref. AP-42 Fig 7.1-13b.

T_{MA}: Monthly Average Ambient Temperature (ºF), ref, NOAA NCDC KSHV, 2009 Data.

T_S: Monthly Average Liquid Surface Temperature (ºF)

where: $T_S = T_{MA} + 2.5$ (based on AP-42 Eq 2-3, Note 3).

EXHIBIT
tables
B

Mike Algero

From: My87yj@aol.com
Sent: Saturday, June 23, 2007 9:14 PM
To: Mike Algero
Cc: Otis Randle
Subject: Lisbon Gas Processing

Mike,

Here are some bullets on what happened today at the oil spill.

*The facility has updated the spill from 150 bbls to 205.49 bbls.
*The product is no longer "Crude Oil" but according to MSDS from Louis Dreyfus it is "Natural Gasoline. It is a very light, high sulfur product.
*Facility personell were informed again that they are still processing and receiving product without the benefit of an LDEQ permit. 600 bbls of processed material was offloaded today and no product was received.
*There is approximately 23,179 bbls of processed and unprocessed product at the site. New product received is going into tank I-9.
*The tank berm was repaired today.
*EPA inspectors were on site upon our arrival. Two EPA officials and two contractors from Weston. The two EPA inspectors went back to Dallas and stated that since the spill was not on federal land or in a navigable waterway, they would not be involved unless I wished their assistance. The two contractors will return in the mornig to go over the facility's SPCC plan.
*The MAML bus has been set up and is monitoring now. No unusual readings noted so far. Wag said the GC was not capable of analyzing a sample from anything other than the sample port.
*Vacuum trucks are picking up the contaminated water and storing it in the tanks onsite for disposal. The water is on the downstream side of the containment dam.
*Altec Environmental rushed the split samples for analysis and received the results this evening. On the east side of Tenneco Rd. the reading was 5.7 ppm benzene. The reading at a quarter mile east of Tenneco Rd. was 4.3 ppm benzene. The reading at the point where the unnamed tributary meets Five Mile Creek was 0.0047ppm benzene.

I will have Jeremy go the the site tomorrow and check on Phil and Wag and the progress of the cleanup. Let me know if you need more information.

Otis

See what's free at AOL.com.